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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/696,736
Filing Date: October 30, 2003
Appellant(s): LANCASTER ET AL.

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For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/18/2008 appealing from the Office action mailed 10/9/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,098,254

BECICKA

3-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. Claims 24-31, 38, 43, 44, 46-50, 54, 62, 65, 67-71, 83, 86, and 173 are rejected under 35 U.S.C. 102(b) as being anticipated by Becicka (U.S. Patent No. 5,098,254).

Becicka et al. '254 disclose method of building a load per claimed invention. The method comprises automatically moving products from an infeed area to a load building area (Figure 1). The method comprises defining desired area of a load to be filled with products using at least two of a height sensor 62, a length sensor 56/58, and a width sensor 64. The method comprises automatically filling the desired area with products and determining when the desired area is filled. The method comprises automatically repeating the moving and filling steps using a single logic sequence for at least two consecutive moving and depositing steps (Figure 1).

Becicka et al. '254 method comprises positioning at least one of the sensors to define respective length, width, and height of the desired area.

Becicka et al. '254 method comprises sensing the location of previously placed products and deposit new products on the previously placed products (Figure 1).

Becicka et al. '254 method comprises sensing the location of the pallet for at least the first filling cycle when the pallet is emptied.

Becicka et al. '254 method comprises setting a desired height of the load by positioning the height sensor 62 at appropriate predetermined level.

Becicka et al. '254 method comprises setting a desired length of the product load by positioning the length sensor 56/58.

Becicka et al. '254 method comprises sending sensing information from the sensors to a controller for automatically controlling the building of the load.

Becicka et al. '254 method comprises repeating the first logic sequence for at least two transporting cycles, i.e. two filled rows, and executing a second logic sequence in the controller for a different transporting cycle to provide interlocking pattern on the next layer (column 5, lines 29-34).

Claim Rejections - 35 USC § 103

2. Claims 32, 45, 51-53, 66, 72, 73, 74, 174-180, 182-187, 189-194, 196-199, and 201 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becicka.
3. Becicka et al. '254 disclose method for building a load per claimed invention as explained above. However, it is silent as to the specifics of adjusting the length sensor 56/58 to define the length of the product load on the load building area. Nevertheless, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, using common engineering sense, to have adjusted the Becicka et al. '254 length sensor 56/58 at any positions along the infeed/loading area to accommodate for different size product loads and pallets.
4. Becicka et al. '254 disclose method for building a load per claimed invention as explained above. However, it is silent as to the specifics of the controller comprises of more than one processor. Nevertheless, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Becicka et al. '254 system with more than on processors because they facilitate another equivalent means for controlling the load building process. Using plural processors, instead of a single processor, for controlling an automatic system is commonly well known in the art.
5. It is obvious that Becicka et al. '254 controller is programmable to accommodate for the loading of different size items on different layers of a single pallet load. For example, new

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products having half the size of previously loaded products could be placed on a next layer row having twice as many products.

6. It is obvious that Becicka et al. '254 controller is programmable to accommodate for the loading of different size items on two different pallets. Each pallet comprises two layers of the same size products.

(10) Response to Argument

With regards to applicant's argument that Becicka fails to disclose defining an area (both horizontal and vertical) to be filled by a layer of cartons and determining what area has been filled, Becicka discloses the use of switches and detectors (62, 56/58, and 64) to determine the operational data of the pallet, including whether the pallet is fully loaded (See Column 4, lines 20-50). In particular, an area to be filled is defined as the predetermined fill point, and when it is loaded to its predetermined size (and area), it is determined that the pallet is fully loaded.

With regards to the argument that the horizontal and vertical area is not defined by the switches and detectors, the area to be filled is defined by not only predetermined characteristics, but also by the location of cartons already on the pallet (See Abstract). Therefore, the area to be filled is in fact defined by the use of height, length and width sensors 62, 56/58 and 64.

With regards to applicant's argument that Becicka does not disclose the use of sensors to determine when the area has been filled, Column 4, lines 20-50 clearly state that the photodetectors and switches will determine when the pallet is fully loaded based on cartons that are currently on the pallet. Therefore, the sensors do in fact determine when the area has been filled.

With regards to applicant's argument that Becicka fails to disclose the automatic repeating of the moving and depositing steps by repeating a single logic sequence for at least two consecutive moving and depositing steps, Column 4 provides for the repeating for moving and depositing steps for filling a partially loaded pallet (See Column 4, lines 51-62).

With regards to applicant's argument that examiner fails to provide factual support for the obviousness rejection, the factual support is in common engineering practice. In particular, having a length sensor that is adjusted to define the length of the product load is obvious due to the fact that adjustability (in this case of the length sensor), where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). Also, it would have been obvious to use plural processors instead of a single processor, because utilization of plural processors is commonly well known in the art. Further, a controller being used to accommodate for different size items is obvious because the fully loaded status of the pallet is determined by the sensors.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ramya G. Prakasam

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651

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